



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,140

FILE B-193154

DATE: May 15, 1979

CNG 02157

MATTER OF: Columbia Research Corporation

DIGEST:

[*Protest of Navy Contract Award*]

1. Protest against apparent failure of solicitation to give advice as to division of work between different performance locations, not raised by protester before closing date for receipt of proposals, is untimely and not for consideration.
2. Allegations, denied by agency, that successful offeror participated in drawing up present procurement specification, that successful offeror's personnel were either not in its employ or were committed to other work at time of proposal submission, and that proposal evaluator was biased against protester, with no supporting evidence are viewed as speculative and do not meet burden imposed on protester to establish its case.
3. Since protester could have requested, but failed to request, time extension to prepare more fully required resumes for submission of best and final offer, it is concluded that protester had adequate time for preparation.
4. Failure of agency to help protester generally upgrade technical proposal during oral discussions is not objectionable since agency conducted discussions with protester on perceived deficiencies.
5. Mere fact that successful offeror had other contacts and contracts with procurement activity not shown to have any role in conduct of instant procurement by another activity of procurement agency is insufficient to invalidate protested award.
6. Evaluation of proposals and award on basis of evaluation scoring to higher-cost, technically superior offer has not been shown to be arbitrary.

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7. Fact that protester was not provided 5 days' notice prior to award to protest (if it chose to do so) size of proposed awardee to Small Business Administration is merely procedural shortcoming which does not affect validity of otherwise proper award. Further, no indication as to prejudice caused by untimely notice has been submitted. p 3c

Columbia Research Corporation (CRC) protests the award made to Evaluation Research Corporation (ERC) under Long Beach Naval Regional Procurement Office, Naval Supply Systems Command, request for proposals No. NOO123-78-R-1089. DLG 01567
AGC 00231

First, CRC contends that offers were improperly solicited. ERC, it is believed, contributed to the preparation of a portion of the specification and was, notwithstanding, improperly permitted to participate in the procurement. While contract performance at two locations was implied in the specification, no basis was provided in the specification for judging the relative portion of the work to be performed at each location, a factor important in calculating the applicable overhead rate and thus the cost of the work to be performed. It is believed that ERC learned sooner than CRC the labor categories for which the 15 key personnel resumes were to be submitted (no advice on this matter was ^{awarded was} in the solicitation) thereby allegedly gaining an advantage over CRC.

Second, it is contended that the proposals were improperly evaluated. As regards the most important evaluation criteria, the "personnel" portion, CRC states that several of the key personnel identified by ERC in its proposal were not available at the time of award, having been contracted for under an earlier Naval Sea Systems Command (NAVSEA) procurement. Further, it is believed that one or more of the key personnel identified in the ERC proposal were not employed by ERC at the time of proposal submission and therefore should not have been considered in the evaluation. Further, the resumes of the key personnel submitted during negotiations by CRC were not adequately considered inasmuch as the initial evaluation, on which CRC received the highest technical scoring, was made by a panel of four persons; the final evaluation, on which

ERC displaced CRC in scoring, was made by only one of these persons, the same person who, allegedly, misled CRC initially as to what labor categories should be covered by resumes. Finally, CRC finds detrimental the fact that during oral discussions prior to the submission of best and final offers, CRC was not asked any technical questions so that it could make improvements in the technical aspects of its proposal.

Third, it is contended that the contract was improperly awarded. The solicitation provided that contract performance cost would increase in importance with the degree of technical equality of proposals. Inasmuch as CRC proposed a cost \$33,287 less than that proposed by ERC, it is believed that award should have been made on the lower-cost CRC proposal, which was essentially technically equal to the ERC proposal. Also, the fact that ERC employees, both before and at the time of award, were working for NAVSEA, which allegedly had participated in drawing up the specification and, perhaps, even in selecting the successful offeror, is felt to constitute an improper conflict of interest. Finally, unsuccessful offerors were not provided the required notice of impending award to permit a challenge to the size status of the proposed small business awardee, and award was made prior to the resolution of what CRC believes to have been its preaward protest.

In commenting on the agency report on the protest, which substantially denies the protester's contentions, CRC emphasizes that the use of the one person rather than the original four persons for proposal evaluations was poor procurement practice. In finding the CRC team of key personnel to lack "depth" vis-a-vis the ERC team, the evaluator erred if consideration was given to personnel in addition to those for whom ERC submitted resumes (as appears to have been done). Also, it is important that the personnel whose resumes were evaluated were at the time employees of ERC.

The initial evaluation resulted in the following technical scoring on the basis of a possible total of 85 points:

CRC	72.68
ERC	69.79
Offeror "C"	72.17
Offeror "D"	34.85

Proposal costs were scored (on a 15-point basis) as 13.90 for CRC, 12.30 for ERC and 15.00 for Offeror "C." Total scores were thus, respectively, 86.58, 82.09, and 87.17. Final evaluation after receipt of best and final offers resulted in the technical score of CRC being increased to 74.8 and ERC's to 78.9. Offeror "C" remained the same. The final total scores were, respectively, 88.70, 91.20, and 87.17.

As regards the first basis of protest, we note that the issue of offerors not being advised in the specification of the relative portion of work to be performed in each location was or should have been apparent to CRC prior to the closing date for the submission of proposals. Since CRC did not protest this issue until after the closing date, this portion of the protest is untimely raised and is not for consideration. 4 C.F.R. § 20.2(b)(1) (1978). As regards the contention that ERC contributed to the preparation of a portion of the specification, CRC has provided no facts to support this or to indicate that the denial of this contention by the contracting activity is incorrect. Since this contention is thus merely speculative, we must find that CRC has failed in its burden to substantiate the contention. Our Office will not conduct investigations to establish whether or not a protester's speculative statements are true. Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181.

Concerning the question of the allocation of the required resumes, the contracting activity feels that CRC should have been able to determine this from the importance placed in the solicitation upon each labor category and that CRC, in any event, should have had sufficient time to have come up with adequate resumes after it learned of the proper allocation prior to the submission of best and final offers. We agree with the agency and also see no reason why CRC did not request more time to prepare resumes if it felt that insufficient time for doing so existed. CRC did not request more time, and thus we must conclude that

sufficient time did exist and that CRC was in no way prejudiced as regards this matter.

Turning to the second basis of the protest, the contracting activity advises that the NAVSEA contract was awarded after the award of this contract; that the two contracts involve a total of approximately 10 man-years of labor, which is less than the minimum of 15 key personnel possessed by ERC as shown by its submitted resumes; and that during the period since the award of the two contracts, no conflict between both requirements has been experienced and none is anticipated. It further notes that a review of the resumes submitted by ERC fails to support the allegation that any of the personnel proposed by ERC were not employed by ERC at that time. From this, we must conclude that CRC has failed in its burden of establishing a case. While we do note that the activity refused to divulge to CRC the personnel ERC proposed to use for the work, we are unable from a perusal of the ERC proposal to say that the personnel indicated were not in ERC's employ at that time.

As regards the fact that only one of the original evaluators made the final evaluation of proposals, CRC has again submitted no evidence to show that it was unfairly treated. A mere allegation of unfair treatment does not meet the burden on CRC to establish its case. Applied Control Technology, B-190719, September 11, 1978, 78-2 CPD 183. In any event, except where the question of bias is involved, the composition of the evaluation panel is a matter primarily within the discretion of the contracting activity. Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176.

As regards the CRC belief that the discussions should have been used to help technically upgrade its proposal, we note that the contracting activity discussed with CRC the areas dealing with proposed personnel which the activity found deficient. The activity was required to do no more in the circumstances. See Washington School of Psychiatry, supra.

In addressing the final protest basis, we note that CRC has presented no evidence, impacting on the validity of the award, that ERC benefited or that CRC was prejudiced from the former's contacts or contracts with NAVSEA or that NAVSEA had any role in the conduct of this procurement.

As regards the fact that CRC submitted a lower proposed cost than ERC, offerors were advised in the solicitation that cost would be the least important factor in the selection of a contractor, and that cost would "not necessarily be controlling." Rather, offerors were advised that "The degree of its [cost] importance will increase with the degree of equality of proposals in relation to other factors on which selection is to be based." We have held that:

"* * * technical point ratings are useful as guides for intelligent decision-making in the procurement process, but whether a given point spread between two competing proposals indicates the significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency." * * * Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384.

In this instance, the CRC proposed cost was about 5-6 percent lower than the proposed cost of ERC. The final evaluation contained the finding that the technical proposal of ERC was superior technically. We are unable to say, and CRC has not proven, that this determination is arbitrary and, consequently, we must accept it. Computer Data Systems, Inc., supra; Umpqua Research Company, B-191331, June 2, 1978, 78-1 CPD 411. Tracor Jitco, Inc., 54 Comp. Gen. 896 (1975), 75-1 CPD 253.

We do note in the "DOCUMENTATION FOR THE REVIEW BOARD" that the negotiator/evaluator in recommending award to ERC advised:

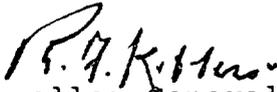
"ERC also presented personnel that have greater flexibility in the different required areas than the other two offerors and the depth of personnel is

by far greater. The loss of one or two key personnel from CRC or * * * [Offeror 'C'] would greatly affect the performance of this effort. ERC has an apparent larger pool of experienced personnel to draw from thereby guaranteeing greater response to the activity's problems."

In addition to the resumes required, ERC submitted the names and positions of other employees with its proposal--a fact which apparently contributed to the original downgrading of its proposal since the evaluators believed ERC was proposing a multiteam concept of accomplishing the work. Of course, any subsequent upgrading of the ERC proposal for these additional personnel would not have been proper. However, in the handwritten evaluation by the negotiator/evaluator this "depth" was not specifically mentioned as a reason for eventually finding the ERC proposal technically superior. CRC has presented no evidence to indicate that the conclusion is arbitrary.

Finally, while by regulation all offerors should have been permitted 5 days' notice prior to award to protest the size status of the proposed awardee, we have held the giving of such a notice prior to award to be merely a procedural matter and not a legal matter which could serve as a basis for disturbing an otherwise valid award. B-169939, August 18, 1970. Further, CRC has in no way indicated that it was prejudiced by the untimely notice.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States